Error to Law and Equity Court of City of Richmond.

Action by L. J. Cheatwood against Mrs. Hugh M. O'Neil. To review a judgment for plaintiff, defendant brings error. Reversed.

A. H. Sands, of Richmond, for plaintiff in error.

David Meade White and *S. A. Anderson,* both of Richmond, for defendant in error.

VAUGHAN *v.* MAYO MILLING CO.

March 18, 1920.

[102 S. E. 597.]

1. New Trial (§ 1*)—Law Accords Litigant Only One Fair Trial.—Under a sound public policy, the law accords to every litigant one fair and regular trial, but only one.

2. Appeal and Error (§ 977 (3)*)—Stronger Case Required to Disturb Grant of New Trial than When New Trial Is Refused.—As a general rule, a stronger case must be made in order to justify an appellate court in disturbing an order granting a new trial than where a new trial has been refused.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 471]

3. Appeal and Error (§ 978 (1)*)—Grant of New Trial for Error in Instructions in Fact Correct Reversed.—Where the trial court has expressly confined its action in granting a new trial to alleged errors in the instructions, appellate court must reverse such order where it finds that the court did not in fact commit error in its instructions.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 600 et seq.]

4. Landlord and Tenant (§ 160 (3)*)—Lessee Need Not Rebuild Structures Destroyed without His Fault.—Covenant to pay rent and leave the premises in good repair, natural wear and tear excepted, imposed upon tenant, in absence of stipulation to the contrary, the duty of paying rent and rebuilding the structures, even though they be destroyed without fault on his part, but Code 1919, § 5180, changed the rule so that a lessee need not rebuild structures destroyed without his fault, unless there be other words showing it to be the intention of the parties that he should be so bound.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 163.]

5. Landlord and Tenant (§ 160 (4)*)—Lessee Covenanting to Repair Must Show That Collapse of Building Was Not Due to His Fault.—The burden is upon a lessee covenanting to leave the premises in good repair to prove that collapse of the building was not due

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

to fault or negligence upon his part, under Code 1919, §§ 5179, 5180, in an action by the lessor to recover the cost of rebuilding.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 161.]

6. Trial (§ 105 (2)*)—Instruction Submitting Issue Raised by Improper Evidence Introduced Without Objection, Proper.—In an action by a lessor on a covenant to leave premises in good repair, lessor could not complain of an instruction to the effect that lessee had a right to rely on oral statements made by the lessor prior to the execution of the lease constituting warranty, where he did not object to the introduction of the evidence upon which the instruction rested.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 560.]

7. Trial (§ 243*)—Instructions As to Liability of Lessee Held Not Contradictory.—An instruction basing nonliability on proof that lessee did not overload a building so as to cause its collapse is not in conflict with an instruction basing nonliability on overloading caused by warranty of strength of building.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 729.]

8. Landlord and Tenant (§ 160 (4*)—Measure of Damages for Breach of Covenant to Leave Building in Good Repair Stated.—In an action by a lessor under a covenant to leave the premises in good repair, the building on the premises having collapsed by reason of overloading, the measure of damages is the cost of replacing a building of equal size, character, and construction, deducting therefrom a proper and just amount for the age and depreciation of the destroyed building and any amount which the lessor received or should receive from the sale of the material salvaged from the building, less such expense as the lessor was put to in producing the salvage.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 165.]

9. Evidence (§ 113 (10)*)—Cost of Reconstruction Admissible to Prove Value of Property Destroyed.—In action of tort for the wrongful destruction of a building, evidence as to the cost of reproduction is admissible as tending to prove the value of the property destroyed.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 165; 5 Va.-W. Va. Enc. Dig. 314.]

Error to Circuit Court of City of Richmond.

Action by Emma Lee Vaughan against the Mayo Milling Company. Judgment for defendant, and plaintiff brings error. Reversed and rendered.

Leake & Buford and *C. V. Meredith,* all of Richmond, for plaintiff in error.

Smith & Gordon, of Richmond, for defendant in error.

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.